

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

RICHARD SMITH  
Plaintiff

V.

No. 4:99-CV-21-B-A

MILK PRODUCTS, LLC,  
d/b/a BORDEN  
Defendant

**MEMORANDUM OPINION**

This cause comes before the court upon the defendant's motion to dismiss. The plaintiff has failed to respond. Upon due consideration of the defendant's memorandum, the court is ready to rule.

**FACTS**

The plaintiff's complaint asserts that both the plaintiff and the defendant are wholesalers of milk, operating in the Washington County, Mississippi, area. The plaintiff asserts that the defendant has been engaged in unfair business competition by attempting to lower its prices on milk to damage the plaintiff's business in violation of both state and federal law. The plaintiff further asserts that the defendant has been negligent in its unfair competition. The plaintiff claims that he has been damaged in the amount of \$30,000.00 and that he continues to be damaged by the defendant's unfair trade practices. No other factual allegations have been made.

**LAW**

The defendants' motion is brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil

Procedure. In considering a motion under Rule 12(b)(6), the district court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff. Baker v. Putnal, 75 F.3d 190, 196 (5th Cir. 1996). Dismissal is not appropriate unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Doe v. Hillsboro Indep. Sch. Dist., 81 F.3d 1395, 1401-1402 (5th Cir. 1996).

Although the plaintiff has failed to specifically identify the particular state and federal laws he contends the defendant violated, the plaintiff is presumably asserting a violation of state and federal antitrust law. To assert a claim under federal antitrust law, the plaintiff must allege that the defendant's actions unreasonably restrained competition. Green v. State Bar of Tex., 27 F.3d 1083, 1087 (5<sup>th</sup> Cir. 1994). Injury to the plaintiff alone is insufficient to support a claim. Id.; see Rutman Wine Co. v. E&J Gallo Winery, 829 F.2d 729, 734 (9<sup>th</sup> Cir. 1987). Antitrust claims under federal and Mississippi law are analytically identical, and thus to support a claim under state law the plaintiff must allege the same essential elements of a federal antitrust claim. See Walker v. U-Haul Co. of Miss., 734 F.2d 1068, 1070 n. 5 (5<sup>th</sup> Cir. 1984). Since the plaintiff has failed to allege that the defendant's actions unreasonably restrained competition, the court finds that the plaintiff's claims for violation of state and federal antitrust laws should be dismissed.

The court likewise finds that the plaintiff's claim for negligence in unfair competition should be dismissed. Antitrust price-fixing can hardly be described as negligent and thus the tort of negligence does not apply to claims of unlawful competition. See Free v. Abbott Labs., Inc., 164 F.3d 270, 274 n.2 (5<sup>th</sup> Cir. 1999).

## **CONCLUSION**

For the foregoing reasons, the court finds that the defendant's motion to dismiss should be granted. An order will issue accordingly.

THIS, the \_\_\_\_ day of April, 2001.

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NEAL B. BIGGERS, JR.  
CHIEF JUDGE